

JOSIE DELVIN
BENTON COUNTY CLERK

AUG 01 2013

FILED

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

STATE OF WASHINGTON
BENTON COUNTY SUPERIOR COURT

ARLENE'S FLOWERS, INC., d/b/a
ARLENE'S FLOWERS AND GIFTS, and
BARRONELLE STUTZMAN,

Plaintiffs

v.

ROBERT W. FERGUSON, in his official
capacity as ATTORNEY GENERAL for the
STATE OF WASHINGTON,

Defendant.

NO. 13-2-01898-2

COMPLAINT

COME NOW Plaintiffs, and allege the following as claims against Defendant,
Robert W. Ferguson, in his official capacity as Attorney General for the State of
Washington:

I. INTRODUCTION

Arlene's Flowers and its owner Barronelle Stutzman have long enjoyed warm
relationships with the company's gay and lesbian customers and employees, including the

COPY

1 customer at issue in this case, Robert Ingersoll. Arlene's Flowers has never refused to
2 sell flowers to anyone simply because of sexual orientation. But because of Barronelle
3 Stutzman's Christian faith, she cannot as a matter of conscience participate in or facilitate
4 a same-sex wedding by using her creative skills to personally craft floral arrangements to
5 decorate the wedding ceremony. The Attorney General's attempt to use state law to
6 compel Ms. Stutzman and Arlene's Flowers to do so violates the most fundamental
7 constitutional rights we enjoy as free citizens.
8

9 II. PARTIES

10 1.1 Arlene's Flowers is a Washington corporation in good standing and
11 licensed to do business in the State of Washington.

12 1.2 Barronelle Stutzman has been a floral designer in the Tri-Cities for 35
13 years. Ms. Stutzman was trained in floral design and artistry by respected designers, and
14 she is recognized in her community for her skill in creating unique and expressive floral
15 arrangements. She has owned Arlene's Flowers, Inc., d/b/a Arlene's Flowers and Gifts,
16 for 16 years.
17

18 1.3 Robert W. Ferguson is the Washington State Attorney General. Attorney
19 General Ferguson claims authority to pursue an action against individuals and businesses,
20 including Arlene's Flowers and Barronelle Stutzman, for alleged violations of the
21 Washington Law Against Discrimination, RCW 49.60 *et seq.* ("WLAD"), *via* the
22 Consumer Protection Act, RCW 19.86, *et seq.* ("CPA"). Attorney General Ferguson has
23 made it clear in public statements that he will pursue litigation against all individuals and
24
25
26

1 businesses that cannot, as a matter of conscience, facilitate, promote, or participate in
2 same-sex weddings.

3 **III. JURISDICTION AND VENUE**

4 2.1 The Superior Court has jurisdiction under RCW 7.24.010 to issue
5 declaratory relief.

6 2.2 The Court has concurrent jurisdiction to issue declaratory and injunctive
7 relief for violations of federal constitutional rights under 42 U.S.C. § 1983. *Sintra, Inc. v.*
8 *City of Seattle*, 119 Wash.2d 1, 11 (1992).

9 2.3 The Superior Court has jurisdiction under RCW 7.40.010 to issue
10 restraining orders and injunctions.

11 2.4 Venue is appropriate in the Benton County Superior Court under RCW
12 4.12.020.

13 **IV. STATEMENT OF FACTS**

14 3.1 Barronelle Stutzman has been designing and creating floral arrangements
15 for 35 years.

16 3.2 After initially working as a delivery person for a local flower shop,
17 Barronelle realized that she had the artistic talent to become a floral designer. She trained
18 under experienced floral designers to develop her natural skill. She also attended training
19 programs and trade shows to further develop her creative skills in floral design and
20 artistry.

21 3.3 With years of experience and natural artistic skills, Barronelle finds the
22
23
24
25
26

1 greatest joy in her job by personally crafting unique floral designs that express her own
2 creativity and style.

3 3.4 Barronelle has owned and operated Arlene's Flowers for 16 years. In that
4 time, she has gained a reputation for being skilled in personally crafting distinct and
5 expressive floral arrangements.
6

7 3.5 Some of the floral arrangements Barronelle creates for weddings include
8 the bridal and attendant bouquets, pew markers, table centerpieces, topiaries, floral and
9 foliage garlands, and corsages and boutonnieres.

10 3.6 Barronelle's floral arrangements for weddings are creative and unique
11 expressions, personally designed specifically to celebrate each wedding.

12 3.7 Before designing floral arrangements for a wedding, Barronelle meets
13 with the client for detailed discussions about the types of designs the couple is looking
14 for. Together they review sample arrangements and talk about the particular details of
15 the wedding and its venue. Barronelle then takes the information from the client to
16 determine a plan for custom-designed floral arrangements for the wedding.
17

18 3.8 In her capacity as the owner and primary floral designer for Arlene's
19 Flowers, Barronelle has been creating floral arrangements for Robert Ingersoll for
20 approximately nine years. Barronelle enjoys the warm and cordial relationship that she
21 has developed with Mr. Ingersoll. She also enjoys creating the challenging and unique
22 floral arrangements Mr. Ingersoll requests.
23

24 3.10 Arlene's Flowers has sold Robert Ingersoll a variety of flowers and
25
26

1 arrangements for a variety of occasions and sentiments throughout the past nine-years.
2 Such occasions include, but are not limited to, birthdays, anniversaries, mother's day,
3 Valentine's Day, and private parties.

4 3.11 Barronelle has known that Robert Ingersoll identifies himself as gay
5 throughout most of their nine year relationship. That fact never made any difference in
6 the way Mr. Ingersoll was treated as a customer.
7

8 3.12 Arlene's Flowers routinely designs floral arrangements for other gay and
9 lesbian clientele. Arlene's Flowers has also had openly gay employees.

10 3.13 Washington only recently adopted a bill to alter the state's definition of
11 marriage to include same-sex couples, in 2012. In her 35 years of personally crafting
12 floral designs and arrangements for weddings, this is the first time that Barronelle has
13 been asked to craft floral designs and arrangements for a same-sex wedding.
14

15 3.14 Approximately one week before March 1, 2013, an employee of Arlene's
16 Flowers told Barronelle that Robert Ingersoll had come by the store to announce that he
17 had become engaged. He also told the employee at the store that he intended for Arlene's
18 Flowers to create the floral arrangements for his wedding, and that he would come back
19 the next week to discuss the matter with Barronelle.

20 3.15 When Barronelle was given the message by her employee, she was
21 distraught because she knew that this posed an insurmountable burden for her religious
22 convictions. Barronelle voted against the passage of the same-sex marriage referendum
23 (R-74) in Washington. She spent time praying and discussing with her husband about
24
25
26

1 how to kindly explain to Mr. Ingersoll that her convictions would not allow her to be
2 involved in decorating a same-sex wedding.

3 3.16 In accord with her understanding of traditional Christian and Biblical
4 values, Barronelle believes that marriage has religious significance apart from any civil
5 significance, and that its religious significance is inherent in the institution of marriage.
6 Barronelle believes, as the Bible teaches, that marriage is defined by God as a union of
7 man and woman.
8

9 3.17 Barronelle knew that creating floral arrangements for Mr. Ingersoll's
10 wedding would be contrary to her sincerely held religious convictions. She believed that
11 doing so would compel her to express a message with her creativity that violates God's
12 commands. She also believed that her creation of the floral arrangements would be
13 perceived as an endorsement and celebration of same-sex marriage.
14

15 3.18 On or about March 1, 2013, Robert Ingersoll came back to Arlene's
16 Flowers as promised to ask Barronelle if she would create the designs and floral
17 arrangements for his wedding. Emotional about her convictions and her decision to
18 decline, Barronelle touched Robert's hand and kindly told him that she could not create
19 the floral arrangements for his wedding because of her Christian faith. Robert Ingersoll
20 noted that he was disappointed, but he said that he understood.
21

22 3.19 Before leaving, Mr. Ingersoll asked Barronelle for referrals to other
23 florists. In response, she gladly gave him names of other local florists that he could use.
24 After chatting for awhile, Barronelle and Mr. Ingersoll hugged each other, and he left the
25
26

1 store.

2 3.20 Robert Ingersoll has received several offers from other florists to create
3 the arrangements for his upcoming wedding.

4 3.21 A few weeks after Robert Ingersoll left Arlene's Flowers, Barronelle
5 received a letter from the Attorney General's office, threatening legal sanctions for
6 alleged violation of the WLAD and CPA, unless she would agree to design and create
7 floral displays for same-sex weddings..
8

9 3.22 The Attorney General's office originally learned about the situation
10 between Arlene's Flowers and Robert Ingersoll, from social media, including Facebook.

11 3.23 Prior to the Attorney General's initial demand as stated in paragraph 3.21,
12 above, neither Robert Ingersoll, nor his partner Curt Freed had ever filed a complaint
13 with the Attorney General's office, or otherwise requested that the Attorney General
14 intervene.
15

16 3.24 Upon information and belief, this case is the first time the Attorney
17 General's office has attempted to use the CPA to pursue a purported violation of WLAD,
18 absent action initiated by the Washington Human Rights Commission. The state agency
19 established by law to enforce the WLAD is the Washington Human Rights Commission.
20

21 3.25 The Attorney General has filed suit against Arlene's Flowers and
22 Barronelle and has indicated that he intends to continue to pursue what he believes to be
23 violations of WLAD via the CPA.

24 3.26 Barronelle is being sued, and she fears future suits by the Attorney
25
26

1 General, for following her conscience and religious beliefs in her work, which has
2 resulted in a chilling effect in the exercise of her constitutional rights and a chill in the
3 exercise of constitutional rights by other small business owners in Washington.

4 3.27 If this Court fails to issue declaratory and injunctive relief, the Attorney
5 General's action in this case will inevitably result in a chilling effect for the exercise of
6 constitutional rights by other, similarly situated businesses in Washington.
7

8 **V. CAUSES OF ACTION**

9 4.1 The claims stated below arise under the Washington Constitution, the First
10 and Fourteenth Amendments to the United States Constitution, the federal Civil Rights
11 Act (42 U.S.C. § 1983), RCW 7.24, and RCW 7.40.

12 4.2 The Attorney General pursues actions under the color of state law. This
13 lawsuit and his threat to pursue legal action against future exercises of conscience and
14 expression has chilled the exercise of Barronelle's constitutional rights to act according to
15 her conscience and religious belief and has similarly chilled the exercise of constitutional
16 rights by other individuals and businesses in Washington.
17

18 4.3 The Attorney General, in his official capacity, is a person for purposes of
19 42 U.S.C. § 1983 in this suit for prospective injunctive and declaratory relief.

20 4.4 The Attorney General sued Barronelle and Arlene's Flowers for the
21 purpose of sending a message to other similarly situated business owners who have
22 religious and conscience reasons for not participating in or facilitating a same-sex
23 wedding.
24
25
26

1 4.5 The Attorney General is constitutionally precluded from compelling
2 Barronelle to use her artistic skill to personally craft expressive floral arrangements for a
3 same-sex wedding when it violates her religious beliefs and her conscience to do so,
4 particularly when there are many other florists willing, ready, and able to create floral
5 arrangements for same-sex weddings.
6

7 **First Claim: Violation of Article 1, Section 11 of the State Constitution**

8 5.1 The Washington State Constitution, in Article 1, Section 11, absolutely
9 protects “freedom of conscience in all matters of religious sentiment, belief, and worship”
10 and guarantees that “no one shall be molested or disturbed in person or property on
11 account of religion.”
12

13 5.2 The state constitution has broader protections for conscience and religious
14 exercise than the federal constitution. A law that has a direct or indirect burden on the
15 free exercise of religion must be justified by a compelling government interest. The state
16 must also show that the means used to achieve the compelling interest are both necessary
17 and the least restrictive available.

18 5.3 Barronelle has a sincere religious belief, which is shared with many other
19 citizens of Washington State, that marriage is uniquely defined by God as a union of a
20 man and a woman and that it would be a serious violation of God’s precepts and her
21 conscience to use her creative skill to personally decorate and thereby personally express
22 a message in support of a wedding between two persons of the same sex.
23

24 5.4 The Attorney General’s actions and public statements in this case are a use
25
26

1 state power to coercively ban an important practice of religion by Barronelle and her
2 business, Arlene's Flowers.

3 5.5 The state's effort here, via the Attorney General, to coerce participation in
4 and facilitation of a same-sex wedding in violation of Barronelle's sincerely held
5 religious convictions is subject to strict scrutiny by the Court.

6 5.6 The state has no compelling interest in forcing Barronelle to violate her
7 conscience and act contrary to her faith by crafting personalized floral arrangements in
8 support of a same-sex wedding.

9 5.7 In addition to the fact that the state has no compelling interest in this
10 context, the means that the state has chosen to pursue its interest is not necessary or the
11 least restrictive available to achieve the desired end.

12 5.8 The Attorney General's actions violate the rights of Barronelle and
13 Arlene's Flowers under Article 1, Section 11 of the Washington State Constitution.

14
15
16 **Second Claim: Violation of the Free Exercise Clause of the First Amendment to the**
17 **United States Constitution**

18 6.1 Arlene's Flowers and Barronelle Stutzman have sincerely held religious
19 beliefs that marriage is a union between a man and a woman, and that to participate in,
20 decorate, or facilitate a same-sex wedding is a violation of her conscience and a violation
21 of her religious belief and right to freely exercise her religious beliefs. The Attorney
22 General's actions substantially burden the free exercise of religion by Barronelle and
23 Arlene's Flowers.
24
25
26

1 6.2 The state's CPA and WLAD are not neutral or generally applicable
2 because, among other things, they have several exceptions that undermine the purposes of
3 those Acts, and they are therefore subject to strict scrutiny.

4 6.3 Because the rights implicated in this case involve the free exercise of
5 religion as well as free speech and free association, this case presents a hybrid claim that
6 also requires application of strict scrutiny.

7 6.4 The state is selectively enforcing the CPA to enforce the WLAD against
8 religious belief and practice, in violation of the First and Fourteenth Amendments to the
9 US Constitution, which also subjects the law's application to strict scrutiny.

10 6.5 The state does not have a compelling interest in forcing Barronelle and/or
11 Arlene's Flowers to participate in, or to decorate a same-sex wedding.

12 6.6 In addition to the fact that the state has no compelling interest in this
13 context, the means that the state has chosen to pursue its interest is not necessary or the
14 least restrictive available to achieve the desired end.

15 6.7 The Attorney General's actions violate the rights of Barronelle and
16 Arlene's Flowers under the Free Exercise Clause of the First Amendment to the United
17 States Constitution.

18
19
20
21 **Third Claim: Free Speech and Free Association Under the State and Federal**
22 **Constitutions**

23 7.1 Barronelle's creation of wedding floral arrangements and design artistry is
24 expression.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

on the basis of conscience and/or freedom of speech.

8.2 Enjoin the Attorney General from compelling Plaintiffs to create floral arrangements for a same-sex wedding.

8.3 Award reasonable attorneys' fees and litigation costs to Plaintiffs, as allowed by statute, court rule, or in equity, as applicable.

8.4 Award such other relief that the Court deems just and equitable.

RESPECTFULLY SUBMITTED this 19th day of July, 2013



JD Bristol, WSBA no. 29820
jdb@snocolaw.com

Alicia M. Berry, WSBA no. 28849
Liebler, Connor, Berry & St. Hilaire, PS
1411 N. Edison St., Ste. C
Kennewick, WA 99336
(509) 735-3581

Dale Schowengerdt, *pro hac vice*
Alliance Defending Freedom
15192 Rosewood Street
Leawood, KS 66224
(913) 685-8000
dale@alliancedefendingfreedom.org

Attorneys for Plaintiffs